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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Concluding observations on the seventh periodic report of Kenya

Addendum

Information provided by Kenya in follow-up to the concluding observations*

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* The present document is being issued without formal editing.

Please recycle

1. Introduction

Kenya ratified the Convention on the Elimination of all forms of Discrimination against Women in 1981. Since then, Kenya has been submitting periodic reports on the implementation of the Convention every four years to the CEDAW Committee. The last report was submitted in April 2009 covering the period 2006-2009. Consequently Kenya engaged in an interactive session with the CEDAW Committee in Geneva in January 2011 following which the Committee made its concluding observations on Kenya's report. Kenya was required to respond to specific issues and submit a report to the Committee within two years.

This report has therefore been prepared in response to concerns expressed by the CEDAW Committee in its Concluding Observations of February, 2011. The report captures steps taken by the Government to implement the recommendations contained in paragraph 12(a) and 22 of the Concluding Observations namely;

Concluding observation 12:

Enact within two years, the Family Protection Bill, the Unified Marriage Bill 2007, the Matrimonial Property Bill 2007 and the Equal Opportunity Bill

Concluding observation 22:

The Committee urges the State party to give attention, as a priority, to combating violence against women and girls and adopting comprehensive measures to address such violence, in accordance with its general recommendation No. 19. The Committee calls upon the State party to expeditiously:

a) Repeal section 38 of the Sexual Offences Act under which women face the risk of being victimized for initiating prosecutions against their abusers;

b) Adopt the regulations for implementation of the Sexual Offences Act;

c) Enact the Family Protection Bill;

d) Criminalize marital rape; and

e) Develop a coherent and multisectoral action plan to combat all forms of violence against women.

2. Measures taken by the Government on the Concluding Observations

Concluding Observation 12:

Enact within two years the Family Protection Bill, 2007, the Unified Marriage Bill, 2007 the Matrimonial Property Bill 2007 and the Equal Opportunity Bill

1. Family Protection Bill, 2007:

The Bill underwent further stakeholders consultations between 2012 and 2013 and refined in keeping with the provisions of Kenya's Constitution 2010 which calls for public participation in such processes. The Bill was renamed and is referred to as **the Protection Against Domestic Violence Bill, 2013**.

Current Status:

The Protection Against Domestic Violence Bill was published for Parliamentary debate on 11 October 2013. It went through the First Reading on 30 October 2013. The Bill was then submitted to the relevant Departmental committee and is awaiting the Second Reading.

Significance of the Bill:

- It defines domestic violence which was previously not provided for in the legal framework. The Bill recognises domestic violence in all its forms and adopts a non-exhaustive list of acts which may be construed as domestic violence.
- It provides for a framework for enabling victims of domestic violence access effective legal protection.
- It sets out the roles of different actors (police, courts) in relation to protection against violence.

2. Unified Marriage Bill, 2007:

The Unified Marriage Bill, 2007. The Marriage Bill also underwent national Stakeholders consultation and aligned with the Consultation.

Current Status:

The Bill was passed by Parliament as The Marriage Act, 2014 on 25 March 2014, and assented to by the President on 29 April 2014 and commenced on 20 May 2014.

Significance of the Marriage Act, 2014:

- It repeals and consolidates into a single law the legal framework relating to marriage and divorce in Kenya
- It brings customary and Islamic marriages within the ambit of the law
- It outlaws child marriages by setting 18 years as minimum age of marriage
- It provides for the requirement of registration of all marriages thus creating certainty as to the existence of a marriage

3. Matrimonial Property Bill, 2007:

Current Status:

The Matrimonial Property Act was assented to on 24 December 2013 and commenced on 16 January 2014.

Significance of the Matrimonial Property Act, 2013:

- It vests the ownership of matrimonial property in spouses in equal shares regardless of the contribution of either spouse towards its acquisition.
- It provides for equal division of matrimonial property between spouses in the event of divorce or dissolution of a marriage.
- It embraces indirect and non-monetary contribution in the acquisition of matrimonial property.

- It outlaws selling, leasing or mortgaging of matrimonial property during the subsistence of a monogamous marriage without the consent of both parties.

4. Equal Opportunity Bill, 2007:

The Equal Opportunity Act, 2007 was shelved from the list of pending Bills in view of the provisions of Article 27 of the Constitution, 2010 which provide for equality and freedom from discrimination and in particular right to equal treatment, including the right to equal opportunities political, economic, cultural and social spheres. Initial discussions are underway to develop a National equality and non-discrimination legislation that will cover all the relevant issues.

Concluding Observation 22;

a) Repeal Section 38 of the Sexual Offences Act under which women face the risk of being victimised for initiating prosecutions against their abusers

Current Status

Section 38 of the Sexual Offences Act was repealed in June 2012. Victims of sexual offences are now able to report cases of sexual violence without fear of criminal sanctions.

b) Adopt the regulations for the implementation of the Sexual Offences Act

The Regulations required for the implementation of the Sexual Offences Act are:

- General Regulations under Sections
- Regulations on Dangerous Offenders DNA Databank
- Medical Treatment Regulations
- Regulations for inter-sectoral implementation of the Act

Current Status

– The General Regulations and the Dangerous Offenders DNA Databank were adopted and gazetted in 2008. These Regulations are part of the Sexual Offences Act (2009 Revised Edition).

ii) The Sexual Offences (Medical Treatment) Regulations:

Current Status:

– The Sexual Offences (Medical Treatment) Regulations were gazetted in October 2012.

Significance of the Medical Treatment Regulations:

- The Regulations provide for free treatment (including counselling) of all victims of sexual violence in public hospitals
- Provide for legal recognition of the Post-Rape Care form for use in proving sexual offences in court
- Expand the scope of health practitioners that can fill in police medical documents and also adduce evidence in court to include nurses and clinicians

- Regulate the handling of medical and forensic evidence among the police, health facilities and Government chemist

iii) Regulations on the Inter-Sectoral implementation of the Act:

These Regulations are referred to as the multi-sectoral standard operating procedures for sexual violence prevention and response.

Current Status:

The regulations have been finalised awaiting launch by the Office of the Attorney General and Department of Justice as of May 2014.

Significance of multi-sectoral standard operating procedures:

- Define the roles of different agencies (Police, local administration, Health, Government Chemist, Children services, Director of Public Prosecutions, Judiciary probation, prisons) in prevention and response to sexual violence
- Define referral networks across different service providers
- Outline a framework for coordination of all agencies at both levels of Government (national and county) in response and prevention of sexual violence

c) Enact the Family Protection Bill:

See discussion above under Concluding Observation 12.

d) Criminalize marital rape:

The provisions of the Sexual Offences Act that de-criminalise marital rape have not been amended. Progress has however been made with the Protection Against Domestic Violence Bill, 2013 which recognises sexual violence within marriage as a form of domestic violence. Once the Protection Against Domestic Violence Bill is enacted into law, the provisions of the Sexual Offences Act will be amended to harmonise them with the provisions of the latter law.

e) Develop a coherent and multi-sectoral action plan to combat all forms of violence against women:

The Ministry of Devolution and Planning which is responsible for gender matters is finalising a National Gender Based Violence Policy to be launched in June 2014. The rationale is to provide a national policy framework for prevention and addressing all forms of gender based violence in Kenya. This Policy provides for a comprehensive coordination that harnesses and synergizes for the prevention and response to Gender based violence at the two levels of Government with clear linkages and reporting management lines. Once the Policy is adopted, a national multi-sectoral plan on all forms of violence against women, children and men as well as a Monitoring and Evaluation framework will be developed.

3. Conclusion

Kenya is in the process of preparing the country's 8th periodic report on CEDAW. The report will include the relevant information on all the other concluding observations in keeping with the reporting guidelines of CEDAW.